

JUDGMENT

UNITED STATES COURT OF APPEALS
ENTERED FOR THE NINTH CIRCUIT
CLERK, U.S. DISTRICT COURT

OCT 23 2000

CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

NO. 98-56704
CT/AG#: CV-97-00864-SVW-Cwx

FILED
CLERK, U.S. DISTRICT COURT
OCT 20 2000
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

H-D MICHIGAN, INC., a Michigan corporation; HARLEY-DAVIDSON MOTOR COMPANY, a Wisconsin corporation

Plaintiffs - Appellees

v.

BIKERS DREAM, INC., a California corporation

Defendant

and

SOUTH COUNTY MOTORCYCLE, INC., a California Corporation

Defendant - Appellant

LODGED
CLERK, U.S. DISTRICT COURT
OCT 19 2000
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

APPEAL FROM the United States District Court for the
Central District of California, Los Angeles .

THIS CAUSE came on to be heard on the Transcript of the
Record from the United States District Court for the
Central District of California, Los Angeles
and was duly submitted.

A TRUE COPY
CATHY A. CATTERSON
Clerk of Court
ATTEST

OCT 16 2000

ON CONSIDERATION WHEREOF, It is now here ordered and
adjudged by this Court, that the judgment of the said
District Court in this cause be, and hereby is AFFIRMED in part,

by: _____
Deputy Clerk

Docketed
REMANDED in part, and DISMISSED in part.
Copies /NTC Sent
JS - 5 / JS - 6
JS - 2 / JS - 3
CLSD

217

Filed and entered

August 24, 2000

NOT FOR PUBLICATION

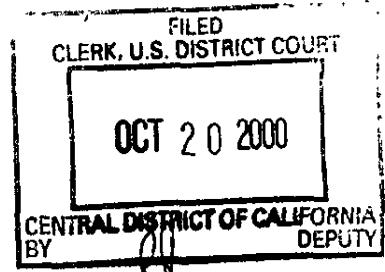
FILED

AUG 25 2000

CATHY A. CATTERSON, CLERK
U. S. COURT OF APPEALS

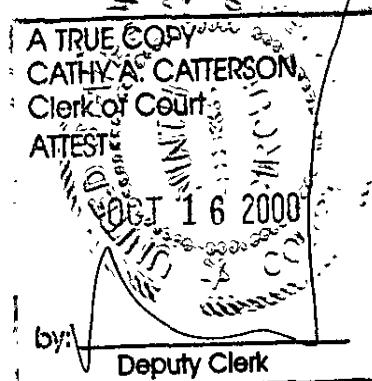
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

H-D MICHIGAN, INC., a Michigan corporation; HARLEY-DAVIDSON MOTOR COMPANY, a Wisconsin corporation,) No. 98-56704
v.) D.C. No. CV-97-864-SVW-CWX
BIKERS DREAM, INC., a California corporation,)
Defendant)
and)
SOUTH COUNTY MOTORCYCLE, INC., a California Corporation,) ORDER
Defendant - Appellant.)



Before RYMER, KLEINFELD, and PAEZ, Circuit Judges:

Costs are awarded in favor of H-D Michigan, Inc. and Harley-Davidson Motor Company.



9/14

FILED

NOT FOR PUBLICATION

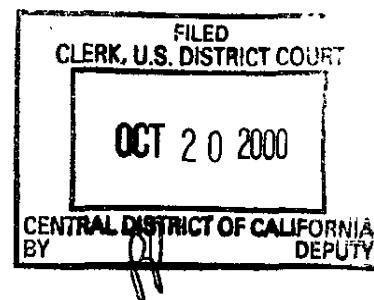
AUG 24 2000

UNITED STATES COURT OF APPEALS

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

H-D MICHIGAN, INC., a Michigan corporation; HARLEY-DAVIDSON MOTOR COMPANY, a Wisconsin corporation,) No. 98-56704
Plaintiffs - Appellees,) D.C. No. CV-97-864-SVW(CWx)
v.)
BIKERS DREAM, INC., a California corporation,)
Defendant,)
and) MEMORANDUM¹
SOUTH COUNTY MOTORCYCLE, INC.,)
a California Corporation,)
Defendant - Appellant.)



Appeal from the United States District Court
for the Central District of California
Stephen V. Wilson, District Judge, Presiding

¹ This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

Submitted July 11, 2000²
Pasadena, California

BEFORE: RYMER, KLEINFELD, and PAEZ, Circuit Judges.

South County appeals the decision of the district court awarding Harley-Davidson summary judgment. South County contends that the district court abused its discretion in setting the discovery schedule, erred in granting summary judgment on Harley-Davidson's trademark infringement, trademark counterfeiting, and trademark dilution claims, and erred in awarding and calculating the damages. Finally, South County appeals the award of attorney's fees.

We find the district court did not abuse its discretion regarding the discovery schedule. We conclude that summary judgment was properly granted on the trademark infringement, trademark counterfeiting and trademark dilution claims, for the well stated reasons of the district court. We also affirm the awarding and calculation of damages, for the reasons stated by the district court.

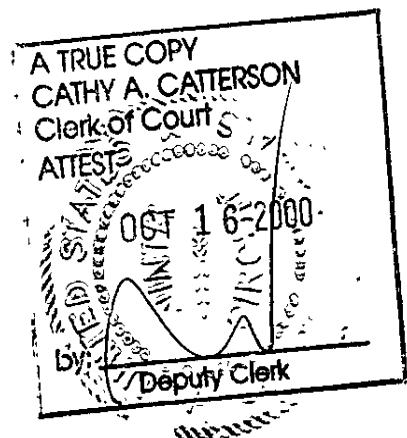
South County appeals the award of attorney's fees. However, the district court has yet to set the amount of the award. “[B]ecause the district court did not set a specific amount for its award of attorney's fees in this case, there is no basis

² The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

for review.”³ We remand so the district court can set the amount of the award.

South County also argues on appeal that the award to Harley-Davidson should have been reduced by the amount Harley had received from other infringers. However, South County never asserted this claim in its opposition to summary judgment. The argument has been waived.⁴

The judgment of the district court is AFFIRMED in part, REMANDED in part, and DISMISSED in part.



³ Penn Central Corp. v. Western Conference of Teamsters Pension Trust Fund, 75 F.3d 529, 535 (9th Cir. 1996).

⁴ Parks School of Business, Inc. v. Symington, 51 F.3d 1480, 1487 (9th Cir. 1995).